

MANUAL TO SUPPORT THE CALCULATION OF CIVIL REPARATION IN CRIMES AGAINST THE PUBLIC ADMINISTRATION PRODUCT N° 26

EXECUTIVE SUMMARY

I. Introduction

From a rights perspective, corruption involves both an abdication of the State's obligation to provide its citizens of essential services, protecting their fundamental rights, and promoting those rights.

In this regard, when the behavior in question conforms to the terms of the criminal substantive code (in the Chapter on Crimes Against Public Administration) and a preliminary investigation is initiated resulting in the opening of a judicial process, the expectation of the State, as a victim of these crimes, is the reparation of the damage that has been inflicted.

Consequently, if the legal right that the criminal law protects through the criminalization of offenses against public administration (official corruption) is the proper functioning of that administration and not the State property as erroneously believed, an issue arises in making an objective claim on behalf of the State for compensation following any judgment against the duly convicted accused.

Accordingly, this has led to the imposition of amounts set by the judges for crimes which pose serious effects on citizens' rights as well as to the image of democratic institutionalism. It is necessary to fully understand that regarding corruption offenses, not only public property is at stake, but a higher value, which is the proper functioning of the administration. When corruption is found to have occurred, there has been a corresponding infringement of fundamental rights of citizens as contained in the constitution as guarantees of the rule of law.

This results in a problem which is difficult to address due to the uniqueness of the social processes and is seemingly unquantifiable in concrete terms. The State through the judicial process is then left with the difficult issue of translating the corrupt offense into a claim for compensation in line with the damage caused.

This Manual to Support the Calculation of Civil Reparation in Crimes against the Public Administration aims to address issues of the effect on public administration, systematizing a method that facilitates the calculation and the justification for the request of civil reparation. The implementation calls for the commitment of the State defense as a tool that will only take shape through the everyday litigation of each case of corruption.

II. Content Summary

The Manual covers the following:

- *Operational Definitions:* definition of corruption and its quantification, legal values protected from corruption crimes, material and reputational damage, non-pecuniary damages, and non-public facilitator.

- *The damage of corruption*: corruption generates serious social consequences related to government property and violation of the institutional rights and equal access by all.
- *Theoretical substantiation*: Analysis of various specialists on the levels of corruption and its effect on society.
- *Description of the method*: method to determine the civil reparation.
- *The calculation of material and reputational damage (observable damage)*: a) Consequential damages: referring to the actual cash assets and loss of quantifiable value suffered by the State, and b) Loss of profits: referred to the income that the State has failed to receive.
- *The calculation of non-pecuniary damages*: Damage related to a series of elements unquantifiable that negatively affect society.
- *Special cases*: Other cases that do not affect the State's assets but generate large damages to the institutional image.